

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CERTAIN UNDERWRITERS AT LLOYDS
AND THOSE COMPANIES SEVERALLY
SUBSCRIBING TO BOEING POLICY
NUMBER 509/JC487006, ROYAL & SUN
ALLIANCE INSURANCE PLC, RLI
INSURANCE COMPANY, ST. PAUL FIRE &
MARINE INSURANCE COMPANY, GREAT
AMERICAN INSURANCE COMPANY,
MITSUI SUMITOMO INSURANCE
COMPANY OF AMERICA, TOKIO MARINE
& NICHIDO FIRE INSURANCE COMPANY,
XL SPECIALTY INSURANCE COMPANY,
FIREMAN'S FUND INSURANCE COMPANY,
THE BALOISE INSURANCE COMPANY,
LTD., HARTFORD FIRE INSURANCE
COMPANY, ZURICH GLOBAL CORPORATE,
UK LTD.,

Plaintiffs,

- against -

YELLOWSTONE TRUCKING, INC., ANNETT
HOLDINGS, INC., and ANNETT HOLDINGS,
INC. d/b/a TMC TRANSPORTATION, INC.

Defendants.

No.

**COMPLAINT AND
JURY TRIAL DEMAND**

COMPLAINT

1

Maloof Browne & Eagan LLC
411 Theodore Fremd Ave., Ste. 190
Rye, NY 10580
(914) 921-1200

EXHIBIT

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Plaintiffs, Certain Underwriters at Lloyds and those companies severally subscribing to Boeing Policy Number 509/JC487006, Royal & Sun Alliance Insurance plc, RLI Insurance Company, St. Paul Fire & Marine Insurance Company, Great American Insurance Company, Mitsui Sumimoto Insurance Company of America, Tokio Marine & Nichido Fire Insurance Company, XL Specialty Insurance Company, Fireman's Fund Insurance Company, The Baloise Insurance Company, Ltd., Hartford Fire Insurance Company and Zurich Global Corporate, UK Ltd. (hereinafter "Plaintiffs") by their attorneys, Montgomery Scarp MacDougall, PLLC and Maloof Browne & Eagan LLC, for their Complaint, allege on information and belief as follows:

I. PARTIES

1. Plaintiff Certain Underwriters at Lloyds and those companies severally subscribing to Boeing Policy Number 509/JC487006 were and are insurance companies organized and existing under and by virtue of the laws of various countries, and are insurers of the Shipment that is the subject of this action, as more fully described below. These companies are as follows:

	Company Name	State/Country of Incorporation	Principal Place of Business
(a)	Royal & Sun Alliance Insurance plc	United Kingdom	London, UK
(b)	CNA Insurance Company, Ltd.	Delaware	Chicago, IL
(c)	Swiss Re Frankona Reinsurance Ltd.	United Kingdom	London, UK
(d)	Tokio Marine Europe Insurance Ltd.	United Kingdom	London, UK
(e)	New Hampshire Insurance Co.	Pennsylvania	New York, NY
(f)	Federal Insurance Company	Indiana	Indianapolis, IN
(g)	Groupama Transport	France	Le Havre, France

COMPLAINT

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(914) 921-1200

1 2. Plaintiff Royal & Sun Alliance Insurance plc was and is a foreign insurance
2 company organized and existing and by virtue of the laws of the United Kingdom, and is an insurer
3 of the Shipment that is the subject of this action, as more fully described below.

4 3. Plaintiff RLI Insurance Company was and is an insurance company organized and
5 existing and by virtue of the laws of State of Illinois, with its principal place of business in Peoria,
6 Illinois, and is an insurer of the Shipment that is the subject of this action, as more fully described
7 below.

8 4. Plaintiff St. Paul Fire & Marine Insurance Company was and is an insurance
9 company organized and existing and by virtue of the laws of the State of Minnesota, with its
10 principal place of business in St. Paul, Minnesota, and is an insurer of the Shipment that is the
11 subject of this action, as more fully described below.

12 5. Plaintiff Great American Insurance Company was and is an insurance company
13 organized and existing and by virtue of the laws of the State of Ohio, with its principal place of
14 business in Cincinnati, Ohio, and is an insurer of the Shipment that is the subject of this action, as
15 more fully described below.

16 6. Plaintiff Mitsui Sumitomo Insurance Company of America was and is an insurance
17 company organized and existing and by virtue of the laws of the State of New York, with its
18 principal place of business in New York, New York, and is an insurer of the Shipment that is the
19 subject of this action, as more fully described below.

20 7. Plaintiff Tokio Marine & Nichido Fire Insurance Company was and is an insurance
21 company organized and existing and by virtue of the laws of the State of New York, with its
22 principal place of business in New York, New York, and is an insurer of the Shipment that is the
23 subject of this action, as more fully described below.

24 8. Plaintiff XL Specialty Insurance Company was and is an insurance company
25 organized and existing and by virtue of the laws of the State of Delaware with its principal place of
26 business in Stamford, Connecticut, and is an insurer of the Shipment that is the subject of this
27 action, as more fully described below.

28 COMPLAINT

1 9. Plaintiff Fireman's Fund Insurance Company was and is an insurance company
2 organized and existing and by virtue of the laws of the State of California, with its principal place
3 of business in Novato, California, and is an insurer of the Shipment that is the subject of this action,
4 as more fully described below.

5 10. Plaintiff The Baloise Insurance Company, Ltd. was and is a foreign insurance
6 company organized and existing and by virtue of the laws of Switzerland, and is an insurer of the
7 Shipment that is the subject of this action, as more fully described below.

8 11. Plaintiff Hartford Fire Insurance Company was and is an insurance company
9 organized and existing and by virtue of the laws of the State of Connecticut, with its principal place
10 of business in Hartford, Connecticut, and is an insurer of the Shipment that is the subject of this
11 action, as more fully described below.

12 12. Plaintiff Zurich Global Corporate, UK Ltd. was and is a foreign insurance company
13 organized and existing and by virtue of the laws of the United Kingdom, and is an insurer of the
14 Shipment that is the subject of this action, as more fully described below.

15 13. Defendant Yellowstone Trucking, Inc. (hereinafter "Yellowstone") is a corporation
16 organized and existing under the laws of the State of Iowa with its principal place of business in
17 Des Moines, Iowa, was and is doing business as a common carrier of goods by road for hire, and
18 was delivering and/or receiving carrier of the Shipment that is the subject of this action. Upon
19 information and belief, Defendant Yellowstone is managed and supervised by Defendant Annett, as
20 both companies share the identical principal place of business, executives and/or corporate officers.
21 Defendant Yellowstone does business in the State of Washington and in this District as it runs
22 trucking routes here and/or otherwise operates in the Western District of Washington.

23 14. Defendant Annett Holdings, Inc. (hereinafter "Annett") is a corporation organized
24 and existing under the laws of the State of Iowa with its principal place of business in Des Moines,
25 Iowa. Defendant Annett supervises and manages its trucking divisions, including TMC
26 Transportation, Inc., as well as Defendant Yellowstone. Defendant Annett does business in the

1 State of Washington and in this District as its various trucking divisions run routes here and/or
2 otherwise operate in the Western District of Washington.

3 15. Defendant Annett Holdings, Inc. d/b/a TMC Transportation, Inc. (hereinafter
4 "TMC") is a corporation organized and existing under the laws of the State of Iowa with its
5 principal place of business in Des Moines, Iowa, was and is doing business as a common carrier of
6 goods by road for hire, and was the delivering and/or receiving carrier and/or freight forwarder of
7 the Shipment that is the subject of this action. Defendant TMC does business in the State of
8 Washington and in this District as it runs trucking routes here and/or otherwise operates in the
9 Western District of Washington.

10 II. JURISDICTION AND VENUE

11 16. This action arises under the Court's federal question jurisdiction (28 U.S.C. § 1331
12 and 49 U.S.C. § 14706), diversity jurisdiction (28 U.S.C. § 1332) and/or supplemental jurisdiction
13 (28 U.S.C. § 1367) as hereinafter more fully appears. The amount in controversy exceeds U.S.
14 \$75,000.00, exclusive of interest and costs.

15 17. Venue is proper here within the meaning of 49 U.S.C. § 14706(d)(1), as all
16 Defendants run trucking routes and/or otherwise operate in the Western District of Washington.
17 Venue is also proper pursuant to 28 U.S.C. § 1391 because all Defendants reside in this District
18 within the meaning of 28 U.S.C. § 1391(c).

19 III. FACTS CONCERNING THE SHIPMENT

20 18. Effective February 1, 2006, Boeing entered into a "Full Truckload Transportation
21 Contract" (hereinafter the "Contract") with Defendant Yellowstone. On or about May 30, 2006, a
22 revision to the Contract changed the Boeing service provider, removing Defendant Yellowstone
23 and replacing it with Defendant TMC, effective June 1, 2006.

24 19. On or about June 12, 2006, in Peebles, Ohio, there was shipped by General Electric
25 and delivered to Ms. Betty Ellen Messner, a trucker for Defendant Yellowstone, two CFM 56-7B
26 Jet Aircraft Engines, serial numbers 892-976 and 892-978, respectively, for use in commercial

1 airplanes by The Boeing Company ("Boeing"), then being in good order and condition (hereinafter
2 the "Shipment").

3 20. Defendants Yellowstone and/or TMC then and there received and accepted the
4 Shipment so shipped. In consideration of certain agreed freight charges thereupon paid or agreed to
5 be paid, Defendants Yellowstone and/or TMC further agreed to transport and carry said Shipment
6 to Tukwila, Washington, and there deliver the Shipment in like good order and condition to
7 Boeing.

8 21. The Shipment was described in two General Electric receipts, numbered 216745 and
9 216746, respectively, both dated on or about June 12, 2006. The Shipment was also described in
10 two General Electric "Shipping Documents," numbered 905893 and 905894, respectively, both
11 dated on or about June 12, 2006.

12 22. Upon information and belief, Defendant Annett incorrectly informed the operator of
13 the Yellowstone truck that the Shipment needed to arrive at its destination within forty-eight hours,
14 when in actuality the Shipment was expected within seventy-two hours or more. As a result of this
15 incorrect instruction from Defendant Annett, the operator of the Yellowstone truck undertook to
16 drive over ten straight hours and through the night of June 12, 2006.

17 23. Upon information and belief, at or about 7:35 a.m. on June 13, 2006, at or around
18 milepost 38 on Interstate 74 in Knox County, Illinois, the operator of the Yellowstone truck
19 carrying the Shipment fell asleep at the wheel, eventually causing the truck to flip over and causing
20 severe damage to the Shipment.

21 24. Thereafter, Defendants Yellowstone and/or TMC did not make delivery of the
22 Shipment in like good order and condition as when shipped, delivered to and received by them, but
23 on the contrary, seriously injured and impaired in value, all in violation of Defendants' obligations
24 and duties as common carriers of merchandise for hire, and to perform their services in a careful,
25 workmanlike manner, and otherwise in violation of their duties.

26 25. Plaintiffs insured the Shipment and have incurred and will incur substantial losses as
27 a result of the damage to the Shipment.

28 COMPLAINT

8 FIRST CAUSE OF ACTION

9 BREACH OF DUTIES UNDER

0 THE CARMACK AMENDMENT

AND/OR OTHER APPLICABLE LAWS

12 28. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 27
13 above and all of the allegations below.

17 30. By reason of the foregoing, Defendants Yellowstone and TMC have caused damage
18 to Plaintiffs in an amount estimated to be up to and exceeding U.S. \$5,750,000.00.

SECOND CAUSE OF ACTION
BREACH OF BAILMENT OBLIGATIONS

22 31. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 30
23 above and all of the allegations below.

24 32. Defendants Yellowstone and/or TMC at all relevant times acted as carriers of goods
25 for hire and/or bailees of and/or otherwise had a duty to care for the Shipment at the time it was in
26 their custody. Defendants Yellowstone and/or TMC thereby, or through their contractors, agents,
27 servants, or sub-bailees, warranted and had a legal duty to safely keep, care for, and deliver the
COMPLAINT 7 Maloof Browne & Egan LLP

1 Shipment in the same condition as when entrusted to them, and/or to perform their services or to
2 ensure that those services were performed with reasonable care and in a non-negligent and
3 workmanlike manner. Defendants Yellowstone and/or TMC breached those obligations and
4 negligently failed to deliver to Plaintiffs' designees and/or consignees the Shipment in as complete
5 and good conditions as when entrusted to them.

6 33. By reason of the foregoing, Defendants Yellowstone and/or TMC have caused
7 damage as alleged herein to Plaintiffs and are liable to Plaintiffs for such damages in an amount
8 estimated to be or exceed U.S. \$5,750,000.00.

9 **THIRD CAUSE OF ACTION**

10 **TORT: NEGLIGENCE AND/OR GROSS NEGLIGENCE**
11 **AND/OR RECKLESSNESS AND/OR WILLFUL CONDUCT**

12 **(As Against Defendants Yellowstone and TMC Only)**

13 34. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 33
14 above and all of the allegations below.

15 35. Defendants Yellowstone and/or TMC, directly or through their employees, agents or
16 independent contractors, each negligently, with gross negligence, recklessly and/or willfully failed
17 to exercise the degree of care in relation to the Shipment which a reasonably careful man would
18 exercise under like circumstances, and/or negligently, with gross negligence, recklessly and/or
19 willfully failed to manage the shipping process and/or handle the Shipment such as was required to
20 be safe and would be sufficient to prevent the damage to the Shipment.

21 36. The Shipment suffered loss as alleged herein, as a proximate result of Defendant
22 Yellowstone's and/or TMC's said negligent, grossly negligent, reckless and/or willful conduct.

23 37. Defendants Yellowstone and/or TMC are accordingly liable to Plaintiffs in an
24 amount estimated to be or exceed U.S. \$5,750,000.00.

FOURTH CAUSE OF ACTION

**TORT: NEGLIGENCE AND/OR GROSS NEGLIGENCE
AND/OR RECKLESSNESS AND/OR WILLFUL CONDUCT**

(As Against Defendant Annett Only)

38. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 37 above and all of the allegations below.

39. Defendant Annett, directly or through its employees, agents or independent contractors, each negligently, with gross negligence, recklessly and/or willfully failed to exercise the degree of care in supervising and/or managing Defendant Yellowstone, Defendant TMC, its trucking divisions and/or its truckers that a reasonably careful man would exercise under like circumstances. It also failed to supervise and/or manage Defendant Yellowstone, Defendant TMC, its trucking divisions and/or its truckers to enable them to carry the Shipment such as was reasonably and legally required and would be sufficient to prevent the damage to the Shipment.

40. Defendant Annett, as manager and/or supervisor of Defendant Yellowstone, Defendant TMC, its trucking divisions and/or its truckers, directly or through its employees, agents or independent contractors, acted improperly. As one such example, it willfully failed to take necessary precautions to uncover and prevent the practice of its truckers to more hurriedly deliver loads than was safe and/or in violation of federal regulations, including, *inter alia*, 49 C.F.R. § 390.13, and/or Defendant Annett willfully aided, abetted, encouraged and/or required such conduct by said truckers. Said conduct also constituted a material deviation from the manner in which Boeing contracted for TMC to handle the Shipment.

41. Defendant Annett is accordingly liable to Plaintiffs in an amount estimated to be or exceed U.S. \$5,750,000.00.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

(As Against All Defendants)

42. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 41 above and all of the allegations below.

43. In the alternative, if the Court finds that Defendants were parties to a valid and enforceable contract, by reason of the foregoing Defendants materially breached and intentionally and willfully deviated from their duties under the applicable law and under said contract.

44. If the contract found to apply is the Contract between Boeing and TMC, same incorporates the application of the law of the State of Washington.

45. Under Washington law, federal common law and/or the Carmack Amendment, each of which are pled in this cause of action in the alternative, contractual limitations of liability are not enforceable, *inter alia*, when the party seeking to enforce the limitation has engaged in grossly negligent and/or reckless and/or willful and/or materially deviant conduct.

46. Defendants are accordingly liable without limitation to Plaintiffs in an amount estimated to be or exceed U.S. \$5,750,000.00.

PRAYER FOR RELIEF

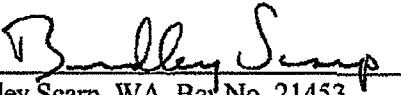
WHEREOF, Plaintiffs pray:

1. That judgment may be entered in favor of Plaintiffs against Defendants for the amount of Plaintiffs' damages, estimated to be or exceed \$5,750,000.00, together with interest and costs, and the disbursements of this action;

2. That this Court will grant to Plaintiffs such other and further relief as may be just and proper.

1 DATED this April 2, 2008 at Seattle, Washington.

2 MONTGOMERY SCARP MacDOUGALL, PLLC

3 By 
4 Bradley Scarp, WA. Bar No. 21453
5 Allan L. MacDougall, WA. Bar No. 1251
6 1218 Third Avenue, 27th Floor
7 Seattle, Washington 98101
8 Tel: (206) 625-1801
9 Fax: (206) 625-1807
10 brad@montgomeryscarp.com
11 john@montgomeryscarp.com

12 and

13 MALOOF BROWNE & EAGAN LLC
14 David T. Maloof (DM 3350)
15 Thomas M. Eagan (TE 1713)
16 411 Theodore Fremd Avenue, Suite 190
17 Rye, New York 10580-1411
18 Tel: (914) 921-1200
19 Fax: (914) 921-1023
20 Email: dmaloof@maloofandbrowne.com
21 *Attorneys for Plaintiffs*

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27 COMPLAINT

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Maloof Browne & Eagan LLC
411 Theodore Fremd Ave., Ste. 190
Rye, NY 10580
(914) 921-1200

JURY DEMAND

Plaintiffs demand a jury trial on all triable issues raised in the pleadings.

DATED this April 2, 2008 at Seattle, Washington.

MONTGOMERY SCARP MacDOUGALL, PLLC

By: 

Bradley Scarp, WA. Bar No. 21453

Allan L. MacDougall, WA. Bar No. 1251

1218 Third Avenue, 27th Floor

Seattle, Washington 98101

Tel: (206) 625-1801

Fax: (206) 625-1807

brad@montgomeryscarp.com

john@montgomeryscarp.com

and

MALOOF BROWNE & EAGAN LLC

David T. Maloof (DM 3350)

Thomas M. Eagan (TE 1713)

411 Theodore Fremd Avenue, Suite 190

Rye, New York 10580-1411

Tel: (914) 921-1200

Fax: (914) 921-1023

Email: dmaloof@maloofandbrowne.com

Attorneys for Plaintiffs